

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

NETLIST, INC.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD., et al.,

Defendants.

Civil No. 2:22-cv-00293-JRG
(Lead Case)

JURY TRIAL DEMANDED

**SAMSUNG’S REPLY IN SUPPORT OF ITS OPPOSED MOTION
TO EXPEDITE BRIEFING ON SAMSUNG’S COMBINED MOTION
FOR (1) AN EXTENSION OF TIME TO FILE A RESPONSE IN OPPOSITION
TO NETLIST’S MOTION FOR PRELIMINARY INJUNCTION
AND THEN A SUBSEQUENT PERMANENT INJUNCTION UPON THE
RESOLUTION OF ALL POST-TRIAL MOTIONS (DKT. 858) AND
(2) A CONTINUANCE OF THE DECEMBER 23, 2024 HEARING ON THAT MOTION**

Netlist's Response to Samsung's Motion To Expedite is illustrative of why Samsung should be entitled to file a reply in support of its Extension Motion, following Netlist's opposition. Netlist mischaracterizes both of the opinions it cites. In *Texas Optoelectronic Solutions, Inc. v. Renesas Electronics America, Inc.*, the Federal Circuit's holding was specific and unsurprising: a patent holder that was awarded only a past royalty at trial is not precluded from also seeking a forward-looking injunction. 895 F.3d 1304, 1331 (Fed. Cir. 2018). At the district court in *Optoeletric*, the damages awarded were for "past infringement," not a fully paid up, lump-sum royalty that would compensate Netlist for "both past infringement **and future infringement throughout the life of the patent**," as the jury was instructed and found in this case. Trial Tr. 1190:10-25 (emphasis added).

Similarly, the Delaware court in *Wirtgen American, Inc. v. Caterpillar, Inc.*, found only that a patentee's demonstration of damages at trial followed by a request for injunctive relief is not so inconsistent as to preclude either. 2024 WL 4216057, at *23 (D. Del. Sept. 17, 2024). That Delaware court opinion cited no evidence that the jury's lump sum award included compensation for future infringement, and expressly considered how to compensate the plaintiff for the "time without the money"—the time following the conclusion of the hypothetical negotiation—and **declined to award an ongoing royalty** in favor of an injunction. *See id.* At bottom, contrary to Netlist's assertions, these cases are wholly consistent with the fact that a fully paid up, lump-sum verdict eliminates the possibility of any injunctive relief now belatedly sought by Netlist.

Netlist's Response confirms that it will expedite its opposition to Samsung's Extension Motion and file it on Monday, December 9, 2024. But a reply brief **from Samsung** will "fully air" the issues raised in Samsung's Extension Motion. Dkt. 861 at 1. Samsung commits to file

its reply brief in support of its Extension Motion one business day after Netlist files its opposition, so that the parties are fully heard on Samsung's Extension Motion well before the currently scheduled December 23rd hearing.

Dated: December 9, 2024

Respectfully submitted,

By: /s/ Ruffin B. Cordell

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5 on December 9, 2024. As of this date, all counsel of record have consented to electronic service and are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3)(A) .

/s/ Ruffin B. Cordell